

REMARKS**Summary of the Office Action**

Claims 10-17 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over He et al. (U.S. Pat. Pub. No. 2003/0049862) (hereinafter “He”) in view of Krahn et al. (U.S. Pat. Pub. No. 2002/022274) (hereinafter “Krahn”).

Summary of the Response to the Office Action

Applicant has newly-amended independent claims 12 and 13 to differently describe embodiments of the disclosure of the instant application and/or to improve the form of the claims. Applicant has canceled claims 10-11 and 14-17 without prejudice or disclaimer. Accordingly, claims 12 and 13 remain currently pending and under consideration.

Rejections under 35 U.S.C. § 103(a)

Claims 10-17 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over He in view of Krahn. Applicants have amended independent claims 12 and 13 to differently describe embodiments of the disclosure of the instant application and/or to improve the form of the claims. The remaining claims have been canceled without prejudice or disclaimer, rendering the rejections of the remaining claims moot. To the extent that these rejections might be deemed to still apply to the remaining claims 12 and 13 as newly-amended, they are respectfully traversed for at least the following reasons.

Applicant respectfully submits that newly-amended independent claims 12 and 13 are supported, for example, by the embodiment disclosed in connection with Fig. 6 of the instant

application. Furthermore, each of independent claims 12 and 13 have been newly-amended to describe a contact condition between an inner wall of the well and an outer wall of the associated outer frame part. By this structure, Applicant respectfully submits that each well can function to hold a setting position of the associated outer frame part of the support structure.

As a result, Applicant notes that the claimed masking member can easily be fixed with respect to the claimed microplate. In this case, each of the light shielding parts can easily and exactly be disposed with respect to the associated well. This can result in an increase in measurement efficiency. Furthermore, Applicant respectfully submits that because the claimed structure can give a comparable light-shielding effect to each well, the increase of measurement accuracy and the homogenization of the light-shielding effect can be achieved.

In each of the newly-amended independent claims 12 and 13 of the instant application, an inner wall of the well is described as being in contact with at least a part of an outer wall of the associated outer frame part, whereby the claimed masking member can easily be fixed with respect to the claimed microplate.

In contrast thereto, Applicant respectfully submits that the well 1 of He does not include any structure that holds a setting position of the associated microcolumn 22 with respect to the well 1 itself. In this regard, as can be seen from Fig. 9B of He, an inner wall of the well 1 is not situated so as to be in contact with an outer wall of the associated microcolumn 22.

In addition, Applicant respectfully submits that Krahn does not teach, or even suggest, a member corresponding to the claimed masking member.

Applicant respectfully submits that neither of the applied He and Krahn references teach, or even suggest, a shielding step. Therefore, Applicant respectfully submits that it cannot be assumed from the disclosure of these references that background light is shielded in every well.

Namely, Applicant respectfully submits that with regard to He, the disk 70, which the Examiner indicates as a light-shielding member, does not have a light shielding effect to any extent. Also, because the disk 70 is printed with a specimen such as DNA and the like, the device of He does not include any structure disclosing that a specimen is disposed on the bottom of well 1. In addition, He does not teach, or even suggest, that a measurement is performed at a condition such that the microcolumn 22 of the plate 10 is inserted in the associated well 1 (c.f. Figs. 9A-9B and 10A-10B).

On the other hand, Applicant respectfully submits that Krahn does teach the separating layer 10 having a light-shielding effect and a liquid permeability. However, as can be seen from paragraphs [0039] and [0040] of Krahn, the separating layer 10 consists of pigment, beads, and the like, and at least the applied Krahn reference does not assume any structure including a plurality of wells.

Accordingly, Applicant respectfully asserts that the rejections under 35 U.S.C. § 103(a) should be withdrawn because He and Krahn, whether taken separately or combined, do not teach, or even suggest, each feature of newly-amended independent claims 12 or 13 of the instant application. As pointed out by MPEP § 2143.03, “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).” Since the prior art does not disclose or suggest any of the combinations recited in Applicants’ claims, and if anything appears to teach away from the current claim recitations, KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727 (2007), Applicant submits that such recited combinations would not have been obvious in view of the applied references of record, whether taken alone or combined in the manner suggested by the Examiner in the Office Action.

CONCLUSION

In view of the foregoing amendments and remarks, withdrawal of the objections and allowance of all pending claims are earnestly solicited. Should the Examiner feel that there are any issues outstanding after consideration of this response; the Examiner is invited to contact Applicant's undersigned representative to expedite prosecution. A favorable action is awaited.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. § 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0573. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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